In the High Court of Judicature at Madras

Dated : 07..07..2006

C O R A M

The Honourable Mrs. Justice Prabha Sridevan

Writ Petition No.18230 of 2006

1. Sony Pictures Releasing of India Ltd.,
   502, Alfa Main Street, Hiranandani Gardens,
   Powai, Mumbai-400 076, through
   Appu Kumar Singh, Authorised Signatory.

2. A.V. Mohan,
   Proprietor, Anuroshni Films,
   A1/9, Bhuneshwari Apartments,
   Bharathidasan Colony,
   K.K. Nagar, Chennai-78. .. Petitioners

Versus

1. The State of Tamil Nadu, through its
   Secretary, Home Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police,
   Egmore, Chennai-8.

3. Union of India,
   Ministry of Information and Broadcasting,
   Through Secretary,
   560, A-Wing, Shastri Bhavan,
   New Delhi-110 001.

4. Central Board of Film Certification,
   Through its Chairperson,
   Bharat Bhawan,
   91-E, Walkeshwar Board, Mumbai. .. Respondents

Prayer : Petition under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the second respondent pertaining to the order dated 1.6.2006 bearing Rc. No.E-2(1)/54427/20006 suspending the exhibition of the film "The Da Vinci Code", quash the same and consequently direct the respondents to permit exhibition of the film "The Da Vinci Code" in theatres in Tamil Nadu.

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For Petitioner : Mr. A.L. Somayaji, Senior Counsel for Mr. R. Yashodhvaradhan.

For Respondents 1 and 2 : Mr. P.S. Raman, Addl. Advocate General, Assisted by Mr. P. Wilson, Spl. G.P.

For Respondents 3 and 4 : Mr. V.T. Gopalan, Addl. Solicitor General of India, Assisted by Mr. J. Ravindran, ACGSC.

Impleaded Parties : Mr. K. Shanmugakani (M.P. No.4 of 2006)
Mr. C. Johnson (M.P. No.5 of 2006)
Mr. G. Rajagopalan, Senior Counsel for Mr. G.N. Sridharan (M.P. No.6 of 2006)
Mr. Conscious Ilango (M.P. No.7 of 2006)
Mr. Lakshmi Narayanan (SR. No.66127 of 2006)

O R D E R

We may search in vain, for a more haunting tragic hero than Satan in Milton's "Paradise Lost", who rails at God,

"What though the field be lost?
All is not lost, the unconquerable will,
And study of revenge, immortal hate,
And courage never to submit or yield
And what is else not to be overcome?"

Milton's voice was not stifled or choked for making Satan a heroic figure, no, not even for two months. In fact, in "Areopagitica", the blind poet champions free speech :

"Give me the liberty to know, to utter and to argue freely according to conscience above all liberties.....

Though all the winds of doctrine were let loose to lay upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse ,in a free and open encounter".

The exhibition of the film, "The Da Vinci Code", exhibited and distributed by the petitioners, which is admittedly a work of fiction, was suspended for two months by the second respondent on the ground that various sections of the Christian community have expressed their strong resentment against the alleged objectionable content of this film, which is against the Christian tenets and they

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are likely to resort to various forms of agitation where the film is to be screened, resulting in communal tension and acts of violence, which will result in breach of peace. The petitoners are aggrieved, they say that their liberty has been unjustly prohibited by the State, and they are before this Court.

2. In 2003, the novel "The Da Vinci Code" written by Dan Brown was published. It is a work of fiction woven around an alternate interpretation of certain aspects of Christian belief and inter alia, proposes that Holy Grail is not an object, but it is actually Mary Magdelene who carried the bloodline of Christ; that this was suppressed by the Catholic Church; that there was a child born to Jesus Christ and Mary Magdelene after she married Jesus Christ; and that Leonardo Da Vinci was aware of this secret. In the book, a Harvard Symbologist Robert Langdon and a French cryptologist Sophie Neveu set out to unravel the mystery of the Holy Grail. This novel, based on which the film has been made, had been a best seller and had been sold worldwide in 44 languages. In Kerala, which has a sizeable Christian population, the book has had a very good sale and it has also been translated in Malayalam. The book has not been banned in India. The film was adapted from the book and it has been released in 65 countries worldwide, including countries with a predominantly Christian population like Italy, Spain, U.S.A. and U.K. When the film was submitted for the Censor Certificate in accordance with the provisions of the Cinematograph Act, 1952 ('Act' in short) there was an apprehension in the Ministry of Information and Broadcasting and therefore, the Honourable Minister invited a panel of Christian leaders to view the film, since the sensibilities of the Christian community in the country occupied the concern of the Minister. On 17.5.2006, the following representatives of the Christian community viewed the film :

Auxiliary Bishop of the Archdiocese of Delhi, Bp. Anil Couto,
Dr. Valson Thampu, Member of the National Integration Council,
Dr. Donald De Souza, Deputy Secretary General of the Catholic Bishops' Conference of India,

Father Henry D'Souza, Executive Secretary of the CBCI Commission for Social Communication,

Father Alex Vadakumthala, Executive Secretary of the CBCI Commission for Healthcare, and

Father John Noronha, Former Executive Director of Caritas India

On 18.5.2006, the Catholic Bishops' Conference of India(CBCI)offered their reflections on the film. They were of the opinion that the film has a storyline which is not acceptable to the Christian community, but that the film did not claim, as the book did, that "all descriptions of art work, architect, documents and sacred rituals are accurate". The Christian leaders who had viewed the film

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also observed that the objectionable interpretations of Christianity voiced by the character by name Teabing were not accepted by the chief protagonist Robert Langdon and that this was a redeeming feature of the film. They averred that the Christian community stood by freedom of faith and expression as well as the duty to respect the inviolability of the sacred and therefore, they requested that -

> "(1) A bold and lingering disclaimer, lasting at least 15 seconds, both at the beginning of the film and at the end, stating that this film is a work of pure fiction and has no correspondence to historical facts of the Christian religion, should be displayed;
>
> (2) The film should be given a 'A' Certificate. The Christian community stands by freedom of faith and expression as well as the duty to respect the inviolability of the sacred."

Subsequently, the Censor Certificate was issued on 23.5.2006 and the reverse of the certificate indicated that the disclaimer as specified by the Christian leaders would be added both at the beginning and the end of the film. On 30.5.2006, the second petitioner addressed a letter to the Honourable Chief Minister of Tamil Nadu bringing to his notice, the release of the film across India on 26.5.2006 in 113 theatres without any untoward incident and also highlighting the circumstances under which the film was granted a Censor clearance. The second petitioner specifically mentioned that the Christian leaders had viewed the film and had stood by the freedom of faith and expression and indicated that the film could be screened with the disclaimer and this letter also informed the Honourable Chief Minister that the disclaimer would be added both in English and in Tamil. The second petitioner, therefore, sought the Chief Minister's support in releasing this film in Tamil Nadu and specifically stated that they were "willing to screen the film exclusively for the Administration and the representatives of the Christian community". On the next day, the impugned order came to be passed.

3. Mr. A.L. Somayaji, learned senior counsel appering for the petitioners submitted that the impugned order is a direct infringement of the fundamental right of the second petitioner to free expression guaranteed by Article 19(1)(a) of the Constitution of India and hence, the impugned order said to have been issued under Section 13(1) of the Act cannot be sustained, especially in the facts and circumstances of the case. According to the learned senior counsel, this court must bear in mind that the book was not banned; there were no protests; the film has been screened in 65 countries without any report of law and order problem; the representatives of the Christian community had viewed the film and this was done on an invitation of the Minister of Information and Broadcasting as an extraordinary measure and they had affirmed their faith in the

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freedom of expression and gave an opinion that the film may be released subject to the disclaimer. Learned senior counsel also submitted that the right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution is one of the most sacred commitments to the citizen and any order which regulates or in any way stifles it, can be reviewed by this court. The learned senior counsel submitted that such review is not subject to the restrictions of a secondary review of an administrative order. The learned senior counsel also referred to the writ petition filed under Article 32 of the Constitution before the Supreme Court, which was dismissed as having no merits and the petitioner in that writ petition had raised all the grounds for restricting the screening of the film, including the certification and the exhibition thereof, so this court is bound by the order passed in that writ petition. The learned senior counsel took this court through the various provisions of the Act and submitted that the right guaranteed under Article 19 of the Constitution should be given full effect to and cannot be taken away by any executive order passed under Section 13 of the Act. He submitted that the phrase " public order" will include "public tranquility and peace", and since the certificate has been granted by the expert body according to the guidelines prescribed under Section 5-B of the Act, there can be no further 'filtering' by the executive, and the only way to reconcile Section 5-B and Section 13 is to read down Section 13. None of the peculiar facts and circumstances that arose in this case, namely the viewing of the film by the representatives of the Christian community and their opinions were taken into account before passing the impugned order. The learned senior counsel also submitted that the fact that Section 13(2) of the Act provides for an approval of the executive order by the Central Government will not in any way dilute the right of the petitioners to approach this Court on receipt of the impugned order. It was also submitted that on the same issue, an order was passed by Goda Raghuram, J. of the Andhra Pradesh High Court on 21.6.2006 in W.P. Nos.11006, 11381 and 11575 of 2006 [Lakshmi Genesh Films & Others vs. Government of Andhra Pradesh & Others], which deals with all the questions raised here.

4. Mr. V.T. Gopalan, learned Additional Solicitor General of India submitted that so long as Section 13 of the Act is there, until that decision by the Central Goverment is taken, the writ is premature.

5. Mr. P.S. Raman, learned Additional Advocate General submitted that the basic objection to the film is that the author has woven fiction around facts and what is shown in the film is really blasphemy. He submitted that in several countries the film has been banned as in China, Egypt, Pakistan, Sri Lanka etc. The fact that the book was not banned cannot help the petitioner's case, since movies have a greater and more lasting impact on the minds of the viewers and they have a wider reach than books. The certificate under

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Section 5 of the Act is granted on satisfaction of the conditions laid down therein, but the impugned order was issued under Section 13 on the basis of ground realities; and the two operate on different spheres. Therefore, the impugned order should be tested not qua Article 19(2) of the Constitution, but by seeing whether it satisfies the test of Section 13, and this court would be sitting not in primary review of the impugned order, but in secondary review. The learned Additional Advocate General also submitted that the word 'likely' used in Section 13 of the Act would mean 'in anticipation'', and a film which is awaiting imminent exhibition would also be a film which is "being publicly exhibited". The learned Additional Advocate General further submitted that the local authority is the only person who can decide the question of breach of peace and when the local authority has on satisfaction of the materials available made a decision, this court cannot go into the correctness of the decision, but shall only see if the decision making process is in accordance with law. The Andhra Pradesh High Court Judgment does not deal with the validity of Section 8 of the Andhra Pradesh Cinemas Regulation Act which is somewhat similar to Section 13(1) which has been invoked in this case.

6. Four miscellaneous petitions, viz., M.P. Nos.4, 5, 6 and 7 of 2006, have been filed by third parties to the writ petition, who want to get themselves impleaded in the writ petition, either to support or attack the impugned order. The learned Additional Advocate General submitted that it would not be open to the impleading petitioner who supports the writ petitioners to traverse beyond the grounds raised by the writ petitioners themselves.

7. Strictly speaking, the lis is between the writ petitioners and the State, which has issued the impugned order, but the petitioners in the above miscellaneous petitions were also heard along with the writ petitioners.

8. Mr. G. Rajagopalan, learned senior counsel appearing for the petitioner in M.P. No.6 of 2006, viz. Dr. Subramaniam Swamy, leader of a political party, who supports the writ petitioners, submitted that the entire issue involved in this writ petition has already been decided by the Supreme Court in Rangarajan's case. But, despite the repeated affirmation by the Supreme Court and the other High Courts that the freedom of speech is one of the most sacred safeguards given to the society, there has been increase in the number of cases of violation of right to freedom of speech and expression and people are being threatened not to express their opinion on a given issue. Learned senior counsel particularly highlighted that, in the State of Tamilnadu there have been instances in the past where statements have been made attacking people's belief in God and there have been books or plays which express a view contrary to the faith of persons espousing a particular religion or ridiculing a God and this State has always allowed such statements to be made or such plays or books

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to be produced, in protection of the right to freedom of speech and it is rather surprising that the State should do a volte face in this case at the instance of this group. He also submitted that Jesus Christ and the teachings belong to the entire humanity and no single group can claim a monopoly over them.

9. The petitioner in M.P. No.4 of 2006 claims to be the President of the Christian Renaissance Movement. According to the learned counsel Mr. Shanmugakani appearing for the petitioner , the first petitioner is a foreigner and therefore not entitled to the protection of Article 19(1)(a) of the Constitution. Articles 25 and 19 of the Constitution have to be harmoniously enjoyed and fundamental rights cannot be enjoyed negatively. Learned counsel also referred to A.I.R. 1957 S.C. 620 [Ramji Lal Modi vs. State of U.P.], where the validity of Section 295-A of the Indian Penal Code was tested, and according to the learned counsel, once the Supreme Court has upheld it, any person who is likely to commit an offence under Section 295-A, I.P.C. cannot claim that his fundamental rights have been breached.

10. An Advocate, who is a Roman Catholic, has filed M.P. No.5 of 2005 seeking to implead himself in the writ petition. According to him, he has filed several suits to raise his voice against Bishops and Priests whenever he felt that they erred in their religious duties. According to him, the disclaimer card and the words that this film is a work of fiction would not take away the injury inflicted upon millions and millions of Christians. According to the learned counsel, the film was released in countries abroad which are predominantly Catholic and that is because there, the community itself is a majority community and perhaps, they had no reason to feel threatened, whereas since here the Christian community is a minority community, the screening of this film threatens them. The learned counsel submitted that history shows that Jesus Christ lived and walked the face of this earth and it also gives the details regarding the appearance of Mary Magdelene in the Bible and what she was. To concoct a story that Jesus Christ married her offends the religious sensibilities of the Christians of this State and therefore, the impugned order was rightly issued. According to him, Article 25 of the Constitution is an individual right and must be protected. It is the subjective satisfaction of the authority regarding the breach of peace that is crucial for the issuance of the impugned order, and the order impugned in this writ petition shows that there is such subjective satisfaction.

11. Finally, M.P. No.7 of 2006 is filed by Mr Martin Jayakumar, who is also an Advocate, who reiterated the submissions by the other counsel and further submitted that the object of the second petitioner is a commercial one and therefore, if at all he can claim any protection, it is under Article 19(1)(g) of the Constitution and not under Article 19(1)(a), and in any event, Article 19(1)(a) cannot

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be invoked to protect blasphemy.

12. The relevant provisions of the Cinematograph Act, 1952 are extracted hereunder :

[1]"[3. Board of Film Certification] - (1) For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the Official Gazette, constitute a Board to be called the [1][Board of Film Certification] which shall consist of a Chairman and [2][not less than twelve and not more than twenty-five] other members appointed by the Central Government.

(2) The Chairman of the Board shall receive such salary and allowances as may be determined by the Central Government, and the other members shall receive such allowances or fees for attending the meetings of the Board as may be prescribed.

(3) The other terms and conditions of service of the members of the Board shall be such as may be prescribed."

[3]"[4. Examination of films - (1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner),

(i) sanction the film for unrestricted public exhibition; [4][*]

[4][Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or]

(ii) sanction the film for public exhibition restricted to adults; or

[5][(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or]

[6][(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or]

(iv) refuse to sanction the film for public exhibition -

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1 Substituted for the words "Board of Film Censors" by the Cinematograph (Amendment) Act (49 of 1981), S.3 (1.6.1983).
1 Ibid.
2 Substituted for the words "not more than nine", ibid.
3 Substituted by Cinematograph (Amendment) Act 3 of 1959.
4 Ibid.
5 Inserted by Amendment Act 49 of 1981.
6 Substituted for cl. (iii), ibid.

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(2) No action under [7][the proviso to clause (i), clause (ii), clause (iia), clause (iii), clause (iv)] of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.]

[8]"[5B. Principles, for guidance in certifying films – (1) A film shall not be certified for public exhibition, if in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of [the sovereignty and integrity of India], the security of the State, friendly relations with foreign States, public order, decenry or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition."

"13. Power of Central Government or local authority to suspend exhibition of films in certain cases – (1) The lieutenant Governor or, as the case may be, the Chief Commissioner, in respect of the [whole or any part of a Union Territory and the District Magistrate in respect of the district within his jurisdiction, may, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension, the film shall be deemed to be an uncertified film in the State, part or district, as the case may be.

(2) Where an order under sub-section (1) has been issued by the Chief Commissioner or a District Magistrate, as the case may be, a copy thereof, together with a statement of reasons therefor, shall forthwith be forwarded by the person making the same to the Central Government, and the Central Government may either confirm or discharge the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Central Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit."

13. The guidelines issued under Section 5-B(2) of the Act for

7 Substituted for the words brakets and figures "clause (ii), clause (iii) (iv), ibid.

8 Substituted by Amendment Act 3 of 1959, S.5b.

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Certification of Films for Public Exhibition were revised in the year 1991 and the relevant guidelines are extracted below :

" GUIDELINES FOR CERTIFICATION OF FILMS FOR PUBLIC EXHIBITION
(SO 836(E), dt.6-12-1991)

In exercise of the powers conferred by sub-section (2) of section 5B of the Cinematograph Act, 1952 (37 of 1952) and in supersession of the notification of the Government of India in the Ministry of Information and Broadcasting No.SO 9(E), dated the 7th January, 1978, except as respects things done or omitted to be done before such supersession, the Central Government hereby directs that in sanctioning films for public exhibition, the Board of Film Certification shall be guided by the following principles :-

1. The objectives of film certification will be to ensure that -

(a) the medium of film remains responsible and sensitive to the values and standards of society;

(b) artistic expression and creative freedom are not unduly curbed;

(c) certification is responsive to social change;

(d) the medium of film provides clean and healthy entertainments; and

(e) as far as possible, the film is of aesthetic value and cinematically of a good standard.

2. In pursuance of the above objectives, the Board of Film Certification shall ensure that -

.....

(xii) visuals or words contemptuous of racial, religious or other groups are not presented;

(xiii) visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented;

.....

(xvii) public order is not endangered;

(xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented.

.....

3. The Board of Film Certification shall also ensure that the film-

(i) is judged in its entirety from the point of view of its overall impacts; and

(ii) is examined in the light of the period depicted in the Film and the Certification standards of the country and the people to which the film relates, provided that the film does

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not deprave the morality of the audience."

14. First, the effect of the dismissal by the Supreme Court of the writ petition in relation to the same film has to be seen. That writ petition, viz. W.P. No.273 of 2006, was filed under Article 32 by a practising Christian. He claimed that the book contains blasphemous description regarding the Christian religion and Jesus Christ, and the film is based on that book. According to the writ petitioner, the Central Board of Film Certification has cursorily issued the certificate without taking it seriously, as it is likely to cause a serious law and order problem which is proved by the newspaper report published in "The Hindustan Times"; the disclaimer shown in the film is a mere eye-wash and it does not change the nature of the film; the book and the film hurt the sentiments of the petitioner and all the millions of Indian citizens and also the petitioner's fundamental rights guaranteed under Articles 14, 19(2), 21, 25 and 32 of the Constitution. Therefore, the petitioner sought the withdrawal of the book from the market, withdrawal of the film of the same title from all cinema halls and for cancellation of the film certificate. In the grounds, the specific portions which the petitioner found objectionable are listed and according to the petitioner, his right under Article 25 is violated. The petitioner also claimed that it was open to the State to impose such restrictions on the absolute right given under Article 19(1) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitment to an offence. The petitioner apprehended violence affecting public order. According to him, the Central Board of Film Certification has not followed the guidelines provided under Section 5-B(2) of the Act.

15. The writ petition itself was dismissed on 12.6.2006 by the following order :

> "Heard learned counsel for the parties. No merit. The writ petition is dismissed."

16. Section 5-B of the Act lays down the principles for guidance in certifying films and it lifts in entirety the language of Article 19(2) of the Constitution. Therefore, the restrictions of Article 19(2) guide the Board of Film Certification while granting a certificate for exhibition. Article 19(2) refers to 'public order', whereas Section 13 refers to 'breach of peace'. Mr. A.L. Somayaji would submit that when the expert body was satisfied that public order was not likely to be endangered by the exhibition of the film and granted it a certificate, it is not for the local authority to exercise powers which over-ride the opinion of the expert body. To counter this argument, learned Additional Advocate General would submit that if one were to take that stand, then Section 13 would virtually be rendered otiose.

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17. All the legal points that are raised here were raised before the Supreme Court. In (1970) 3 S.C.C. 746 [Madhu Limaye vs. Sub Divisional Magistrate], the phrase 'maintenance of public order' is explained. We are asked to imagine three concentric circles; law and order represents the largest circle, within which is the next circle representing public order and the smallest circle represents the security of the State. All cases of disturbances of public tranquility fell in the largest circle, but some of them are outside the public order for the purpose of the phrase 'maintenance of public order'. Similarly, every breach of public order is not necessarily a case of an act likely to endanger the security of the State. The acts become graver as we journey from the periphery of the largest circle towards the centre. In this journey, we travel first through public tranquility, then through public order and lastly to the security of the State. The overlap of public order and public tranquility is only partial. When the expression 'public order' includes absence of all acts which are a danger to the security of the State and also acts which are prevented by the expression 'ordre publique', it was observed that "in our judgment, the expression 'in the interest of public order in the Constitution' is capable of taking within itself not only those acts which disturb the security of the State or acts coming within the expression 'ordre publique' as described, but also certain acts which disturb public tranquility or are breaches of peace". Therefore, since law and order problem was raised in the grounds of that writ petition, the order of the Supreme Court must be considered to have dealt with 'breach of peace' also.

18. The order of the Supreme Court is passed on merits and binds this Court. That order was passed while deciding a writ petition filed under Article 32 of the Constitution, and not a petition under Article 136. However, since arguments were advanced on the other aspects, they will also be dealt herein.

19. Next, we must see whether the impugned order infringes Article 19(1)(a) or whether it is protected by Article 19(2). Freedom of expression occupies a very special position among the constitutional guarantees. The right of the State to exert its power of regulation is hemmed by Article 19(2). It does not include intolerance to expression of one's views in the market place. There will be periods of renaissance in history only when there is free inflow and outpouring of ideas, ideas which may even run counter to the dominant, traditional opinion must have their free play, and this is the hypothesis on which free speech is built, that speech can rebut speech and propaganda will answer propaganda.

20. Some opinions expressed by the Judges of the Supreme Court of the United States of America in certain important cases will now be referred to, not because they are binding, but because they

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highlight the importance of freedom of expression.

21. In Terminiello vs. Chicago [93 L. Ed. 1131], the following observations are found :

> "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky vs. New Hampshire [315 US pp.571, 572, 86 L ed 1034, 1035, 62 S Ct 766], is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. See Bridges vs. California [314 US 252, 262, 86 L ed 192, 202, 62 S Ct 190, 159 ALR 1346] and Craig vs. Harney [331 US 367, 373, 91 L ed 1546, 1550, 67 S Ct 1249]. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups."
>
> .....
>
> "Freedom of speech undoubtedly means freedom to express views that challenge deep-seated, sacred beliefs and to utter sentiments that may provoke resentment. But those indulging in such stuff as that to which this proceeding gave rise are hardly so deserving as to lead this Court to single them out as beneficiaries for the first departure from the restrictions that bind this Court in reviewing judgments of State courts."
>
> .....
>
> "Determination of such an issue involves a heavy responsibility. Courts must beware lest they become mere organs of popular intolerance. Not every show of opposition can justify treating a speech as a breach of peace. Neither speakers nor courts are obliged always and in all circumstances to yield to prevailining opinion and feeling. As a people grow in capacity for civilization and liberty, their tolerance will grow, and they will endure, if not welcome, discussion even on topics as to which they are committed."

In Dennis vs. United States [95 L. Ed. 1137], referring to Mill's famous dictum, "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind', it is observed that,

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"....."

Free speech has occupied an exalted position because of the high service it has given our society. Its protection is essential to the very existence of a democracy. The airing of ideas releases pressures which otherwise might become destructive. When ideas compete in the market for acceptance, full and free discussion exposes the false and they gain few adherents. Full and free discussion even of ideas we hate encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart."

In Abrams vs. United States [63 L. Ed. 616], it has been observed as follows :

"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas, - that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

22. Our Supreme Court is no less protective of this cherished right. In (1994) 5 S.C.C. 550 [Gajanan Visheshwar Birjur vs. Union of India], the Supreme Court, while dealing with an order of confiscation of books containing Marxist literature, referred to the supremacy of the fundamental right of freedom of speech and expressed its unhappiness over the attempts at thought control in a democratic society like ours with these words :

"Human history is witness to the fact that all evolution and all progress is because of power of thought and that every attempt at thought control is doomed to failure. An idea can never be killed. Suppression can never be a successful permanent policy. Any surface serenity it creates is a false one. It will erupt one day. Our Constitution permits a free trade, if we can use the expression, in ideas and ideologies.

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It guarantees freedom of thought and expression – the only limitation being a law in terms of clause (2) of Article 19 of the Constitution. Thought control is alien to our constitutional scheme. To the same effect are the observations of Robert Jackson, J. In American Communications Association vs. Douds [339 U.S. 382, 442-43 (1950) = 94 L Ed 925] with reference to the U.S. Constitution -

> "Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored'."

23. The learned Judge of the Andhra Pradesh High Court has dealt with all the questions raised here in great detail and has referred to various decisions of the Courts in India and United States, as well as the observations of great scholars. The following extract is particularly eloquent :

> "The point is not whether these alternate interpretations, accounts, dogma, speculations or theories are true. Antiquities of every kind are encompassed in different proportions of fact, fiction, belief, myth and legend and present myriad hues of reality according to the subjectivity of the observer believe. The point is whether it is a legitimate human occupation to question, probe, be skeptical about and inquire into what some others fundamentally believe and whether the right of an individual to be inquisitive or a non-conformist is not a protected value in contemporaneous civil society.
>
> Cultural, political or religious personalities having wide recognition and of medieval or ancient vintage are iconic and multifaceted persona, at the same time, historical figure, commanding faith and belief, awe and reverence, or dissapprobation and dissent, myth, legend and mystery; multifaceted since different people or classes of people or sub-cultures of society perceive and believe different aspects of the complex of the personality and differently at different times.
>
> If Jesus is a historical personality as is widely assumed, free speech values legitimize debate and contest, discourse and dissent about the persona. If Jesus were a legend, then too is debate and refinement of the legend legitimate. This is true of every religious and iconic personality and this the condition over the millennia of History. Such dissonance is an

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essential attribute of the rational human personality. The values of free speech and expression command protection of such dissonance." - vide Lakshmi Genesh Films & Others vs. Government of Andhra Pradesh & Others (supra).

24. According to the petitioners, since the impugned order violates their fundamental right, this court would sit in primary review over the same, whereas the State would contend that what this court has to decide is whether the administrative order satisfies the test of reasonableness and therefore, it is really a secondary review, and if in the subjective opinion of the authority there are materials to come to the conclusion that there is likelihood of breach of peace, then this court cannot sit in appeal over the impugned order.

25. The objection of the State that judicial review of the impugned order is restricted and that merely because the petitioner claims that his fundamental right is affected one cannot widen the scope of judicial review must be rejected. If this court were to tie its hands only because the impugned order states that the local authority, viz. the second respondent has exercised the power under Section 13(1) of the Act, then it would give the local authority a very wide and untramelled power to sit over the decision taken by the expert body which grants the certificate in accordance with the principles of Section 5-B of the Act. The reference to Section 13(1) in the impugned order, or the reproduction of the phraseology used in the section, does not make the order automatically immune from judicial scrutiny.

26. In A.I.R. 1978 S.C. 597 [Maneka Gandhi vs. Union of India], the question, how to test the State action vis-a-vis its effect on fundamental rights has been dealt with by the Supreme Court as follows :

> "Now, if the effect of State action on a fundamental right is direct and inevitable, then a fortiorari, it must be presumed to have been intended by the authority taking the action and hence, this doctrine of direct and inevitable effect has been described by some jurists as the doctrine of intended and real effect. This is the test which must be applied for the purpose of determining whether S.10(3)(c) of the impugned order made under it is violative of Article 19(1)(a) or (g)."

In fact, in the same judgment, the Supreme Court holds that even without attacking the constitutional validity of the Section under which the impugned order is made, it is always open to the court to decide whether an order made under such a Section is invalid as contravening a fundamental right,

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"But that does not mean that an order made under S.10(3)(c) may not violate Art.19(1) (a) or (g). While discussing the constitutional validity of the impugned order impounding the passport of the petitioner, we shall have occasion to point out that even where a statutory provision empowering an authority to take action is constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory provision is valid, the action may be void."

.....

"It is true, and we must straightaway concede it, that merely because a statutory provision empowering an authority to take action in specified circumstances is constitutionally valid as not being in conflict with any fundamental rights, it does not give a carte blanche to the authority to make any order it likes so long as it is within the parameters laid down by the statutory provision. Every offer made under a statutory provision must not only be within the authority conferred by the statutory provision, but must also stand the test of fundamental rights. Parliament cannot be presumed to have intended to confer power on an authority to act in contravention of fundamental rights. It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights. This would seem to be elementary and no authority is necessary in support of it."

The Supreme Court also rejected, as extravagant, the argument that if the Section is held to be good, the consideration of any question of infringement of fundamental rights is wholly beside the point, referring to A.I.R. 1960 S.C. 430 [Narendra Kumar vs. Union of India]. The Supreme Court therefore, held that though the impugned order is within the terms of the relevant section, "it must nevertheless, not contravene any fundamental rights and if it does, it would be void." So, if the impugned order violates Article 19(1)(a), it is void.

27. The case of the State is that the restriction imposed is reasonable. Therefore, straightaway, we must take it as tacitly accepted that the fundamental right of the petitioners has been placed under restriction. The question now is, whether it is substantively and procedurally reasonable. The film makes it clear that it is only a work of fiction. In fact, the leaders of the Christian community note with approval that the claim made in book that, "all descriptions of art work, architect, documents and sacred rituals in this novel are accurate", is eschewed in the film, where straightaway it is claimed that the entire work is fiction.

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28. In A.I.R. 2005 Bombay 145 [F.A. Picture International vs. Central Board of Film Certification], the Central Board of Film Certification refused to grant censor certificate to the film, 'Chand Bhujh Gaya' on the ground that it is full of gory visuals of violence and gruesome killings and that certain characters have definite resemblance to real life personalities and on the ground that the violence which took place in the State of Gujarat is still a live issue. The Division Bench of the Bombay High Court, while acknowledging the fact that a court exercising writ jurisdiction would ordinarily not substitute its view for the view of an expert, yet interfered in the matter, since the learned judges felt that the word 'ordinarily' furnishes the key to the manner in which the court shall exericse its jurisdiction and it was because the courts have made a commitment as expounders of the constitutional principles, and when the decision of the Central Board of Film Certification entrenches upon the fundamental right of freedom of speech and expression, it is not merely the function, but the duty and responsibility of the court to intervene and therefore, they directed the first respondent to issue an appropriate censor certificate.

29. In this case, the authority which should certify whether a film shall be exhibited or not has granted a certificate and inspite of that, the local authority has passed the suspension order. The local authority has adverted its attention neither to the special features of this case nor to the circumstances under which the certificate has been granted. More particularly, it should be noted that on just the day prior to the passing of the impugned order, the second petitioner had submitted a representation to the Honourable Chief Minister of Tamil Nadu, bringing to his notice the events that culminated in the grant of the certificate and offered to show the film to the authorities concerned and the members of the Christian community, if need be, and sought with all respect, the State's support in releasing the film in Tamil Nadu. Without reference to any of this, the impugned order has been passed extracting the language of the Section and "fluffing" it up by stating that the sensibilities of a large section of the people had been offended. It would be dangerous to allow the State to straight-jacket the right to freedom of expression, as artistic expression may be asphyxiated by law, if a petulant group of self-appointed 'Censors' prescribe the paradigms for suspending the exhibition of a film which has got the approval of the Censor Board. The fact that the Censor Board is a high powered body with a statutory mandate to grant certificates for films is not in dispute. So, even more than in the case of "Chand Bhuj Gaya', it is the duty of the Court to protect the petitioner.

30. When a pro bono publico prosecution was launched against the producer of the film, "Satyam, Sivam, Sundaram" in A.I.R. 1980 S.C. 258 [Raj Kapoor vs. State], the Supreme Court observed that the Censor Certificate is a relevant material, important in its impact, though not infallible in its verdict. While holding that the Court

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is not barred from trying the case, the Supreme Court observed that the Magistrate cannot brush aside what another Tribunal for similar purpose found and this is crucial :

> "May be, even a rebuttable presumption arises in favour of the statutory certificate but could be negatived by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed."

31. (1989) 2 S.C.C. 574 [S. Rangarajan vs. P. Jagjivan Ram], which is popularly known as Rangarajan's case, arose out of our Court's decision and it virtually answers all the questions raised in the present writ petition. In that case, the objection to the film "Ore Oru Gramathile" was that it made observations regarding the reservation policy of the Government, suggesting that reservation could be made on the basis of economic backwardness. The film was granted a 'U' Certificate, but the High Court revoked it and ruled out the film altogether. It is this decision of the High Court that was challenged before the Supreme Court. The Supreme Court observed, "If the exhibition of the film is restricted, it would run afoul of the democratic principles to which we have pledged ourselves under the Constitution. Everyone has a fundamental right to form his own opinion on an issue of general concern. He can form and inform by any legitimate means. Public discussion is a basic feature of a democracy and it is this process which distinguishes it from other forms of Government. Democracy can neither work nor prosper unless people go out to share their views and it is based essentially on free debate and open discussion." The following observations of the Supreme Court are relevant :

> "Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of. But he has a right to 'think out' and put the counter-appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however hateful to its policies. As Professor Freund puts it, "The State may not punish open talk, however hateful, not for the hypocritical reason that Hyde Parks are a safety value, but because a bit of sense may be salvaged from the odious by minds striving to be rational, and this precious bit will enter into the amalgam which we forge".[9]
>
> "When men differ in opinion, both sides ought equally to have the advantage of being heard by the public" – Benjamin Franklin.

9 Paul A. Freund : On Understanding the Supreme Court 26 (1950)

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"If one is allowed to say that policy of the government is good, another is with equal freedom entitled to say that it is bad. If one is allowed to support the governmental scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue."

.....

"The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interset of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg'."

By no stretch of imagination can one say, in this case, that the effect of the movie is intrinsically dangerous to the public interest.

32. (1988) 1 S.C.C. 668 [Ramesh vs. Union of India] was also a case where there was a book that preceded the serial TAMAS and there had been no adverse reaction to the book for several years since its publication. The petition to restrain the telecast of the film was dismissed by the Supreme Court on the ground that there is a vast area for creative art to interpret life and society with its foibles along with what is good. The restrictions or the standards that we set upon this freedom of expression must be so framed that protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. A democratic society must make a substantial allowance in favour of freedom. It was contended before the Supreme Court that the real danger of the film was that it would incite people to violence and commit offences arising out of communal disharmony. The Supreme Court observed that if some scenes of violence or some events in the film can stir up certain feelings in the spectator, then there are other equally deep, strong, lasting and beneficial impression that can be conveyed by other scenes which depict mutual respect and tolerance, scenes

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showing comradeship, help and kindness which transcend the barriers of religion. Learned Additional Advocate General would submit that no such lofty motive as existed in the mind of the author of TAMAS can be said to exist in the mind of the author of The Da Vinci Code. The objections to TAMAS and the objections to this film are different. There, the attack was that the turbulent Partition scenes were likely to incite certain feelings, so the Supreme Court referred to the motive of the author. Here, the objection in the impugned order is that there may be public intolerance to certain scenes. That is why the film is exhibited with a disclaimer.

33. The film is clearly stated to be a work of fiction. The interpretation regarding what is Holy Grail is not an original interpretation of the novelist. The learned Judge of the Andhra Pradesh High Court, after having seen the film, observed :

> "There is nothing in the theme of the film, either in the story-line, the dialogeus or the visual exposition which denigrates Jesus or His Ministry. No doubt, the fictional account is orchestrated and unfolds around an alternate interpretation that the Christ was essentially a mortal being who married Mary Magdalene and left a bloodline which was the "Sang Real" (Royal Blood) - the Holy Grail. This alternate interpretation, assumption or dogma (or even heresy - according to individual perception) does not appear to be the original, though fictional creation of the novelist Dan Brown, all on his own."

In 1982, there was a book, "The Holy Blood and the Holy Grail" which propounded a substantially similar and provocative interpretation of the Holy Grail and of the bloodline. Similarly, in 1986, the same authors published "The Messianic Legacy".

34. The issue in the present case is not whether these alternative assumptions are true. The issue is whether there can be a work of art or literature or a film which propounds such interpretations and whether the public have the right to decide whether to accept or reject such alternative interpretation. The issue is whether the petitioner's right to freedom of expression and equally, a person's right to see the film can be curtailed by the State ostensibly on the ground that a section of the people does not accept that the petitioners have such freedom of expression. The issue is whether the State is bound to protect the person whose fundamental right is sought to be violated by people who threaten to breach peace, or whether the State will mutely watch such threats. All these issues must be answered in favour of the petitioners.

35. In A.I.R. 2002 S.C. 2112 [Union of India vs. Association for Democratic Reforms], which dealt with the voters' right to know the relevant particulars of their candidates, the Supreme Court referred

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to Articles 19(1) and (2) of the International Covenant of Civil and Political Rights which specifically guarantee to everyone not only the right to freedom of expression which shall include "freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

36. In Whitney v. California [274 U.S. 357], this is what Justice Brandeis of the U.S. Supreme Court says about repression :

> "It is hazardous to discourage thought, hope and imagination; .... fear breeds repression; that repression breeds hate; that hate menaces stable government; ".

True, we must pay special heed to the demands of Article 19(2) marking out the boundaries of Article 19(1), and the societal value of free speech must be subject to the 19(2) considerations. When the inter se dynamics of Articles 19(1) and 19(2) are assessed, the inescapable conclusion is that there is no reasonable basis for the impugned order. I am aware of Justice Frankfurter's warning that courts should not assume primary responsibility between political, economic and social pressures. Here, when the statutory body had granted permission to screen the film as per the guidelines, the local authority, without "thinking", had stopped the screening.

37. The impugned order clearly violates the petitioners' right of freedom of expression. If the court finds that a claimed right is entitled to protection as a fundamental right, then the law infringing it must satisfy the compelling State interest test. The question would be then whether the State interest is of such importance as would justify the violation of the fundamental right. Even if the order suspends the exhibition of the film only for a period of two months, the violation does not lose its severity and therefore, it must be quashed since the impugned order does not satisfy the compelling State interest test. When highly respected members of the Christian community have seen the film and have not expressed any apprehension that the film is likely to incite such feelings as would result in breach of peace, and when the Censor Board has also certified that the film is worthy of being exhibited, the compulsion that forced the State to pass the impugned order is inexplicable and does not justify the violation of the fundamental right of the petitioners. When our Courts have considered it their duty and responsibility to intervene when even the Central Board of Film Certification interferes with the fundamental right of freedom of speech and expression, the duty and responsibility is heavier in this case where the film has got the Censors' approval and yet, the petitioners have been prevented from exhibiting the film by an order which has no reasonable basis. Therefore, the impugned order is void for contravention of the fundamental right. The fact that the

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film had passed the test of Section 5 shows that the restrictions of Article 19(2) do not come into play. Then, the order under Section 13 cannot be passed 'brushing aside' the recognition of worthiness of the film by a statutory body.

38. Now, we will see whether the writ is premature, as contended by the respondents. It is surprising that the Central Government should take a stand that until and unless an order is passed by the Central Government under Section 13(2) of the Act, it is not open to the petitioners to file this writ petition. It was the Central Government which had invited the prominent leaders of the Christian community to view the film, in the special circumstances of the case, and only thereafter the Central Board of Film Certification granted the certificate for the film with the disclaimer, as requested by the Christian leaders. Merely because Section 13(2) of the Act makes it mandatory for the authority who passes the impugned order to forward the same to the Central Government, it is not necessary for the petitioners to wait, since already by the order passed under Section 13(1), their fundamental rights have been infringed. The producer or the distributor of the film, as the case may be, who has invested huge amounts of money in the making of the film and has booked theatres for screening the film, perhaps since he has received a Censor Certificate, need not wait when the authority passes an order which violates his fundamental rights. In fact, in Rangarajan's case, the Supreme Court refers to the prompt action that should be taken by the authorities in the matters of certification. "The producer who has invested a large capital should not be made to wait needlessly and he has a statutory right to have the validity of the film determined in accordance with law as soon as it is submitted for certification." In this case, the statutory right of the petitioners has been determined by the Censor Board which has issued the Censor Certificate for the film and it is only thereafter, the local authority comes up with the impugned order suspending the exhibition of the film for two months.

39. Moreover, it is not as if the suspension would definitely come to an end with the culmination of the two month period, since Section 13(3) of the Act states that the Central Government may direct that the period of suspension may be extended by such further period as it thinks fit. We have already seen what the Minister for Information and Broadcasting had done before the Censor certificate was issued. In ths particular case, in the circumstances cited above, the Central Government, if it is reasonable, cannot take a contrary stand barring the exhibition of the film. But in view of the inexplicable stand taken by the Central Government in this instant case that the petitioner must wait and suffer the suspension order, it is possible that the Central Government may even extend the period of suspension further. This is a case where the left hand of the Government should know what the right hand has done. The producer or the distributor of the film need not wait with bated breath until the

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Central Government pleases to take a decision in this case. Therefore, the objection of the Central Government that the writ is premature is rejected. It is expected that the Government will not behave like a common litigant, out to oppose any case where it is arrayed as a respondent. The objection of the State Government that the impugned order merely suspends the exhibition of the film for a period of two months and therefore, the petitioners should have waited till an order is passed by the Central Government is also rejected.

40. Even if I were to accept the State's submission that this is a case for secondary review, which I do not, for the reasons laid down in Maneka Gandhi's case (supra), the impugned order fails the test. There is total non-application of mind on the part of the local authority to advert to the peculiar history of this case, as also the view expressed by the Catholic Bishops' Conference of India, and there is no mention of the representation made by the second petitioner to the Honourable Chief Minister of Tamil Nadu.

41. According to the State, this case stands on a different footing from the decisions which have been cited on behalf of the petitioners. Those were all pre-censor certification cases; this is the only case where post-certification, an order under Section 13(1) of the Act has been passed. I do not think that is really material, since the reasons enumerated by the Supreme Court in Rangarajan's case apply fully here.

42. The learned Additional Advocate General submitted that the words, "is being publicly exhibited" in Section 13(1) should be taken to include even a film that is about to be exhibited. Though the question of opportunity of hearing was not raised by the petitioners, it is interesting to note that Section 7 of the Tamil Nadu Cinemas Regulation Act, 1955, which also deals with suspension of exhibition of films in certain cases, for precisely the same reasons - as mentioned in Section 13 of the Cinematograph Act - "affords reasonable opportunity" to the affected person, and the words used are "any film which is being or about to be exhibited". These observations are made only in passing and only because the learned Additional Advocate General had contended that when there is imminent danger, the person cannot be heard, and the words "which is being exhibited" in Section 13 include even films which are likely to be exhibited. The petitioners have not raised this issue herein.

43. The learned Additional Advocate General relied on 2004 (11) S.C.C. 213 [Delhi Development Authority vs. UEE Electricals Engg. (P) Ltd.], (2003) 4 S.C.C. 579 [Indian Railway Construction Co. Ltd. vs. Ajay Kumar], (1999) 1 S.C.C. 759 [Apparel Export Promotion Council vs. A.K. Chopra] and A.I.R. 2000 S.C. 3689 [Om Kumar vs. Union of India] for the purpose of indicating the limits of judicial review,

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but since the grounds on which the impugned order is quashed have already been explained, these decisions do not help the State. Viewed even from the angle of reasonableness, the impugned order fails.

44. It is also contended on behalf of the State that an order under Section 13(1) of the Act cannot be construed to be an order of the executive, over-riding the order made by the expert body, but it is an order passed by the local authority who is the best person to decide whether there is likelihood of breach of peace. According to the State, there were materials to show that there would be breach of peace if the film is exhibited. The inability of the State to maintain law and order or to avert a situation of breach of peace can never be a ground to throttle the fundamental right guaranteed to the petitioners under Article 19(1)(a). In fact, Rangarajan's case also deals with this issue on the following lines :

> "This takes us to the validity of the plea put forward by the Tamil Nadu Government. In the affidavit file on behalf of the State Government, it is alleged that some organisations like the Tamil Nadu Scheduled Castes/Scheduled Tribes People's Protection Committee, Dr. Ambedkar People's Movement, the Republican Party of India have been agitating that the film should be banned as it hurt the sentiments of people belonging to Scheduled Castes/Scheduled Tribes. It is stated that General Secretary of the Republicant Partyt has warned that his party would not hesitate to damage the cinema theatres which screen the film. Some demonstration made by people in front of "The Hindu" office on March 16, 1988 and their arrest and release on bail are also referred to. It is further alleged that there were some group meetings by Republican Party members and Dr. Ambedkar People's Movement with their demand for banning the film. With these averments, it was contended for the State that the exhibition of the film will create very serious law and order problem in the State.
>
> We are amused yet troubled by the stand taken by the State Government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be oppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of

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expression."

In that case, two revising committees had approved the film. The members thereof came from different walks of life with variegated experiences and represented a cross-section of the society and they judged the film. In the present case, one of the highest bodies of the Christian community in the country had viewed the film and submitted that they affirm the freedom of expression and the freedom of faith and all that they requested was that the disclaimer should be shown for 15 seconds both at the beginning and the end of the film. The Board had judged the film in the light of the objects of the Act and the guidelines provided for that purpose.

45. When the State has a duty to prevent all threats of demonstrations and processions, which amount to intimidating the right of freedom of expression, it cannot plead its inability to handle breach of peace if and when it arises. In Rangarajan's case, the question of local problem was specifically addressed by the Division Bench of this Court, whose judgment was set aside by the Supreme Court. In A.I.R. 1989 Madras 149 [P. Jagajeevan Ram vs. Govt. Of India], this is what the Division Bench had observed :

> "This film taken in Tamil for the Tamil population, on being screened in Tamil Nadu, will certainly be viewed in the background of
>
> what has happened in Tamil Nadu during the preceding four decades and the reactions are bound to be volatile."

And before the Supreme Court, the State specifically took the stand that there is likelihood of a law and order problem and we have already seen the reaction of the Supreme Court to such a stand.

46. In this context, in the present case, I would like to refer to A.I.R. 1989 Madras 205 [R. Gandhi vs. Union of India], which arose out of a Public Interest Litigation in respect of the trials and tribulations undergone by the Sikh community of Coimbatore in the wake of the assasination of the former Prime Minister Smti. Indira Gandhi. The law and order situation broke down and there was an incalculable loss of property to the Sikh community who suffered privations of a horrendous character, for no fault of theirs. The news of the assasination spread in Coimbatore around 11.15 am and the anti-social elements who had indulged in violent activities were arrested only in the night on the same day and normalcy returned to the city only on 4.11.1984. It was contended on behalf of the State that the violence was not pre-planned and that it was a sudden and spontaneous outburst, in reaction to the assasination and that the State had taken all steps to maintain communal harmony and to safeguard the interest of the minority. That was a case where the State could not have anticipated such large scale violence. Even

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then, the learned Judge observed as follows :

> "The maintenance of law and order is the primary duty of the State and under our Constitution, it is a State subject and tops the State List. No Government worth the name can abdicate this function and put the life and liberty, the hearth and home of the citizens in jeopardy. Art.38 of the Constitution enjoins on the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Under Art.19(a) and (g) of the Constitution, any citizen of this country is entitled to reside and settle in any part of the Territory of India and to practice any profession or to carry on any occupation, trade or business. Art.21 lays down that no person shall be deprived of his right or personal liberty except according to the procedure established by law. As pointed out by the Supreme Court in Bombay Pavement Dweller's case [A.I.R. 1986 S.C. 180], no person can live without the means of living, that is, the means of livelihood and the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Under Art.300(A) of the Constitution, no person shall be deprived of his property save by authority of law and to allow his properties to be reduced to ashes by the force of darkness and evil is a clear deprivation of the right to property guaranteed by the Constitution. The members of the Sikh Community form an integral part of the Indian society; they have every right to settle down in Coimbatore and carry on their profession. They have the Constitutional right to live and they cannot be deprived of their means of livelihood. Their right to proerty is inviolable. All these Constitutional rights of the Sikhs and a few members of the other communities have been flagrantly infringed by the inaction of the law enforcing authrities. Fundamental rights are not mere brutum fulmen. They are the throbbing aspirations and realities of civilised human life, they cannot be rendered desuetude or dead-letter or as observed by Bhagwati, J. As he then was, 'a paper parchment, a teasing illusion and a promise of unreality', by the failure of the State to protect those rights. These unfortunate victims of arson and violence are, therefore, entitled to seek reasonable compensation from the State of Tamil Nadu, which has failed in its duty to protect their Constitutional and legal rights."

This is not a case where the State will be taken by surprise, so I can only repeat, with respect, the observations of the Supreme Court in Rangarajan's case to reject the stand of the State.

47. The State contended that the film is blasphemous and

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therefore, its exhibition has to be suspended and for this purpose, reliance was placed on the judgment of the Kerala High Court in A.I.R. 1988 Kerala 175 [T. Parameswaran vs. District Collector, Ernakulam]. That case arose out of the prohibition order passed in respect of a play dealing with Jesus Christ. The Court appointed a panel to view the play and file a report. Many of the members of the panel found the play objectionable and blasphemous and therefore, the prohibition order in that case was upheld. This decision will not help the State. In that case, the panel had viewed the play and they found the play objectionable and blasphemous. In the case on hand, the Catholic Bishops' Conference of India had agreed to the exhibition of the film if the disclaimer, as requested by them, was displayed. And, if we see the statement made by the Catholic Bishops' Conference of India to the Minister for Information and Broadcasting, it shows that the chief protagonist of the film, or in common parlance the hero, does not accept the interpretations of Christianity made by the character Teabing, which found disfavour with the Christian community. The Catholic Bishops' Conference of India was of the opinion that the viewers of the film may end up with an erroneous view of the Church and Christianity (emphasis supplied). The Christian leaders did not find the film blasphemous. In any event, 'blasphemy' is not the ground for issuing an order under Section 13(1) of the Act. Those hurdles were crossed when the film was certified for exhibition by the Censor Board. So, the objection of blasphemy must fail.

48. As regards the harmonious interpretation of Articles 25 and 19, it is clear from a reading of these provisions that the rights under Article 25 are subject to the other provisions of Part III, which means they are subject to Article 19(1). And it is not clear how the exhibition of the film will interfere with anyone's freedom of conscience or the right to profess, practise and propagate a particular religion. In Ramji Lal Modi's case (supra), it was contended before the Supreme Court that a law interfering with the freedom of speech and expression and imposing a punishment for its breach, the attack being to Section 295 A of the Indian Penal Code, is ultravires since it interferes with the Article 19(1)(a) of the Consitution. The Supreme Court held that it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interest of public order. The Supreme Court held that having regard to the ingredients of the offence created by the impugned section, "there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. We do not see how this will hold in sustaining the impugned order". The test is whether the space occupied by the 'speech' or 'expression' is that of individual freedom or one of criminal behaviour. The Supreme Court said that when it is a criminal act, the rights' boundaries are crossed, and the safeguard

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of Article 19(1) is not there. But in this case, the petitioners' right to protection is there, as is clear from the response of the Catholic Bishops' Conference of India and the Certificate granted for exhibition of the film. The suspension of exhibition of the film is an assertion of Power exercised by self-appointed arbiters of what can be exhibited and what cannot be exhibited, who may be Officers of the State or members of the public representing a particular group. The Censor Board which granted the certificate was well aware of the restriction subject to which a certificate under Section 5 is granted and yet, granted the certificate and therefore, we must reject the submission that by protecting the freedom of expression of the writ petitioners', the right under Article 25 is violated.

49. In (2001) 1 S.C.C. 582 [Union of India vs. K.M. Shankarappa], the validity of Section 6(1) of the Act came up for consideration. As per Section 6(1) of the Act, the Central Government could at any stage call for the record of any proceeding in relation to any film which is pending before or has been decided by the Board or decided by the Tribunal, and after such inquiry into the matter as it considers necessary, make such order. Earlier, in A.I.R. 1971 S.C. 481 [K.A. Abbas vs. Union of India], it was contended that an appeal from the decision of the Censor Board should lie to a court or to an independent Tribunal and not the Central Government. In that case, the Solicitor General stated that the Government would stay on foot legislation to effectuate the creation of an independent Tribunal as an appellate body. The Supreme Court expressed its satisfaction that, "the Central Government will cease to perform curial functions through one of its Secretaries in the sensitive field involving the fundamental right of speech and expression. Experts sitting as a Tribunal and deciding matters quasi judicially inspire more confidence than a Secretary and therefore, it is better that the appeal should lie to a Court or Tribunal". Thereafter, Section 5-C, which provided for an appeallate Tribunal was enacted by Cinematograph (Amendment) Act 49 of 1981. In Shankarappa's case (supra), the Supreme Court disapproved of the Government retaining powers by enacting Section 6(1). When the Government has chosen to establish a quasi judicial body which has been given the powers to decide the effect of the film on the public, and a Judge of a High Court and other experts in the field give their decision, that decision will be final and binding so far as the executive and the Government is concerned. The Supreme Court said that to permit the executive to review or revise that decision would amount to interference with the exercise of judicial functions by a quasi judicial board and that it would amount to subjecting the decision of a quasi judicial board to the scrutiny of the executive. The Supreme Court said that Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution and under which it is the executive who has to obey judicial orders and cannot sit in appeal or review or revise a judicial order. The

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Supreme Court stated in no uncertain terms that the Government would be bound by the ultimate decision of the Tribunal. In that case also, the question of law and order problem was raised. The Supreme Court once again reiterated what it had stated in Rangarajan's case as follows :

> "Once an expert body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the State Governemnt concerned to see that law and order is maintained. In any democratic society, there are bound to be divergent views. Merely because a small section of the society has a different view, from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law."

50. It was contended on behalf of the State that while deciding Shankarappa's case, the Supreme Court was well aware of Section 13 and yet, had not chosen to declare it illegal. In that case, the vires of Section 13 was not challenged and therefore, merely because there is no reference to Section 13, we cannot presume that the Supreme Court had given its seal of approval to the constitutionality of Section 13. Even here, the petitioners have not challenged that Section, but the reasoning given by the Supreme Court in Shankarappa's case will apply to this case while deciding whether it was open to the executive to pass the order under Section 13. When the power given to the Central Government under Section 6(1) for reviewing, revising or sitting in appeal over the decision of the quasi judicial body has been taken away for the reasons explained in the paragraphs extracted above, we must imagine the rigour of the test that the State will have to satisfy in order to justify the impugned order. The State fails the test. If a section of the society threatens to express its views by unlawful means thereby curtailing the fundamental rights of citizens, the State owes its duty not to please those persons who threaten such breach of peace, but to protect those persons whose fundamental rights are threatened to be violated. Therefore, even from this angle, the impugned order fails the test. Such threats to freedom of artistic expression are on the rise. We see such incidents all over the country. This is not healthy; this trend must be nipped in the bud. To echo Justice Brandeis, this trend will rock the stability of the State. In his speech, "Ancient Insights and Modern Man", Mr. Palkhivala says, "India has had an unrivalled tradition of religious freedom and tolerance. That tradition was born of the consciousness that truth can never be the monopoly of any one sect or creed". To what depths have we now fallen? One can only say ..... Cry my beloved country.

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51. The persons who object to the film, are not involuntarily and forcibly exposed to the contents of the the film. They must buy the tickets to see the film. If someone is offended by what he knows to be the film's content, he is free to avoid watching the film. It is doubtful whether the objectors or the authorities have even seen the film. In the words of the learned Judge of the Andhra Pradesh High Court, there is a mechanical certification "of the heckler's veto of a few objections on dictation as it were, rather than informed satisfaction of his own as legislatively ordained". The impugned order must, therefore, be quashed.

52. Though I have heard the petitioners who have filed the impleading petitions, I do not think they are necessary parties to the lis. The impleading petitions are, therefore, dismissed. For all the above reasons, the writ petition is allowed with costs of Rs.15,000/- (Rupees fifteen thousand only) to be paid by the respondents to the second petitioner. Consequently, M.P. Nos.2 and 3 of 2006 are closed.

The learned Additional Advocate General makes a request to grant some indulgence in the matter of awarding costs. The cost originally imposed, i.e., a sum of Rs.15,000/- is reduced to a sum of Rs.1,000/- to be paid by the first respondent to the second petitioner. This correction is directed to be incorporated in the order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary, Home Department,
   Govt. of Tamil Nadu,
   Fort St. George, Chennai-9.

2. The Commissioner of Police,
   Egmore, Chennai-8.

3. The Secretary,
   Ministry of Information and Broadcasting,
   Govt. of India,
   560, A-Wing, Shastri Bhavan,
   New Delhi-110 001.

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4. The Chairperson,
   Central Board of Film Certification,
   Bharat Bhawan,
   91-E, Walkeshwar Board, Mumbai.

+ one cc to Mr. R. Yashod Vardhan, Advocate sr no. 29366
+ one cc to Mr.G.N. Sridharan, Advocate sr no. 29357
+ one cc to the Government Pleader sr no. 29306

GG(CO)
NM(07.07.2006)

Writ Petition No.18230 of 2006

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